

**EPA - NEW ENGLAND'S REVIEW
OF CONNECTICUT'S 2002 SECTION 303(d) LIST
March 6, 2003**

I. PURPOSE

The purpose of this review document is to describe the rationale for EPA - New England's approval of Connecticut's (CT) 2002 Section 303(d) list. The following sections identify key elements to be included in the list submittal based on the Clean Water Act (CWA) and EPA regulations (see 40 CFR §130.7). EPA - New England reviewed CT's methodology used to develop the §303(d) list and CT's description of the data and information it considered. Our review of CT's §303(d) list is based on an analysis of whether CT reasonably considered all existing and readily available water quality-related data and information, and reasonably identified waters required to be listed. EPA also closely examined all the requests Connecticut made to remove water bodies from the 2002 §303(d) list that had appeared on the previous list in 1998 to ensure that only those which met approved criteria were allowed to be removed. The paragraphs below are arranged to reflect the organization of guidance from EPA, titled, "Recommended Framework for EPA Approval Decisions on 2002 State Section 303(d) List Submissions," transmitted in a memorandum from EPA Headquarters dated May 20, 2002.

II. STATUTORY AND REGULATORY BACKGROUND

Identification of WQLSs for Inclusion on Section 303(d) List

Section 303(d)(1) of the Act directs States to identify those waters within their jurisdiction for which effluent limitations required by section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirements apply to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control requirements required by State, local or federal authority. See 40 CFR §130.7(b)(1).

Consideration of Existing and Readily Available Water Quality-Related Data and Information

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR §130.7(b)(5). In addition to these minimum categories, States are required to consider any other data and information that is existing and readily available. EPA's 1991 Guidance for Water Quality-Based Decisions describes categories of water quality-related data and information that may be existing and readily available. See *Guidance for Water Quality-Based Decisions: The TMDL Process*, EPA Office of Water, 1991, Appendix C ("EPA's 1991 Guidance"). While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR §130.7(b)(6) require States to include as a part of their submissions to EPA documentation to support decisions to rely, or not rely, on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

Priority Ranking

EPA regulations codify and interpret the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR §130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those water quality limited segments (WQLSs) targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitat, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and state or national policies and priorities. See 57 Fed. Reg. 33040, 33045 (July 24, 1992), and EPA's April 1991 Guidance listed below.

III. REVIEW OF CT'S §303(d) SUBMISSION

EPA-New England reviewed Connecticut's Draft 2002 Section 303(d) list dated May 14, 2002. The Connecticut Department of Environmental Protection (CT DEP) revised the list based on comments received during the public comment period and on EPA comments (EPA letter to CT DEP dated August 28, 2002). The CT Final 2002 §303(d) list was submitted to EPA-New England on October 1, 2002. In response to comments made by EPA during review of the final list documents, additional information was provided to EPA through in depth discussions in a meeting on November 14, 2002, between EPA and DEP, and in subsequent phone conversations and emailed responses. The submittals include the components identified below.

1. 2002 List of Connecticut Water Bodies Not Meeting Water Quality Standards, including:
 - (A) Lists of adopted TMDLs, water bodies with work in progress toward development of TMDLs, and water bodies under the Connecticut Fish Consumption Advisory (information additional to that required for the §303(d) list)
 - (B) Appendix A - 2002 List of Water Bodies Not Meeting Water Quality Standards
 - (C) Appendix B - Reconciliation of the 1998 and 2002 Impaired Waters Lists
2. Connecticut Consolidated Assessment & Listing Methodology (CALM) for §305(b) and §303(d) Reporting
3. Connecticut 2002 List of Waters Not Meeting Water Quality Standards, Responsiveness Summary: Response to Comments Document

CT DEP conducted a public participation process in which it provided the public the opportunity to review and comment on the 2002 draft §303(d) list. DEP sent out notices to several hundred groups, agencies, municipal authorities, and individuals, inviting them to comment on the list, and it placed notices and copies of the list documents on the DEP website. In addition, DEP held a public information meeting on June 19, 2002 at its office in Hartford to describe the §303(d) listing process and to answer questions pertaining to both the list and future TMDL activities. EPA concludes that CT's public participation process was consistent with its Continuous Planning Process (CPP), and that CT provided sufficient public notice and opportunities for public involvement and response.

CT received a large number of comments on the draft list from four river or watershed organizations, two fishermen's organizations, a citizen, Rivers Alliance of Connecticut, the CT Department of Agriculture/Bureau of Aquaculture, the CT Department of Public Health, and EPA New England. CT DEP prepared a "Response to Comments" document which lists each comment and the State's response. EPA-New England reviewed CT DEP's responses and concludes that CT adequately responded to the comments.

IV. ANALYSIS OF CONNECTICUT'S SUBMISSION

Identification of Waters and Consideration of Existing and Readily Available Water Quality-Related Data and Information

EPA reviewed the State's submission, and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR §130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

CT DEP generated the 2002 Section 303(d) list as a subset of its Section 305(b) report. It considered the most recent §303(d) list and §305(b) report, and added water bodies to the list as indicated by its review of all existing and acceptable data and information. DEP consulted with its nonpoint source unit about water bodies impaired by nonpoint sources of pollution (NPS) that should be included on the list.

CT DEP has categorized water bodies on its list or for removal from the list with its own tiered system, which follows EPA's §305(b) and §303(d) list categories as set forth in EPA's November 19, 2001 integrated guidance, "2002 Integrated Water Quality Monitoring and Assessment Report Guidance," as follows:

EPA Category	CT Tier	Explanation
4A	1	TMDL has been developed
4B	4	Removed from list, other enforceable control authority expected to result in attainment of water quality standards
4C	5	Removed from list, impairment is not caused by a pollutant
5A	2	TMDL required, impairment is caused by a pollutant
5B	3	TMDL required, cause of impairment is unknown

Categories 5A and 5B comprise the CT §303(d) list, which EPA reviewed and is approving in this action. Categories 4A-C are not part of the §303(d) list, although they appear on the list in the submitted documents. EPA Categories 1-3 do not appear in CT's list documents and are not components of the §303(d) list.

CT's §303(d) list in 2002 contains many water bodies with more than one segment. In many cases, each segment may have more than one impaired designated use. In some cases, a single segment of a water body has several impaired uses for which it is listed and the impaired uses have different priorities for TMDL development.

Six water body segments have multiple impaired uses for which one or more of the impaired uses may be on the §303(d) list and one or more may be taken off because the impairment is either not due to a pollutant (EPA Category 4C, CT Tier 5) or because other actions are expected to fix the problem (EPA Category 4B, CT Tier 4). Several segments have an impaired use for which a TMDL has already been developed, and one or more others for which a TMDL will be needed.

Connecticut identified, when known, the pollutant(s) causing or suspected to cause exceedences of the applicable water quality standards, including those pollutants having no corresponding numeric criteria in the standards. CT identifies pollutants on the list in the column entitled “Cause (Potential Cause).”

Based on the requirements for data quality defined in its new assessment methodology, CT DEP removed water bodies that were listed in the most recent, 1998 §303(d) list based on anecdotal information of various types, and/or water bodies for which there was insufficient data to support the original assessment of the previously listed impaired designated use. Please refer to CT’s 2002 CALM document for details. DEP also removed water bodies:

- ! which have been found to meet water quality standards and support designated uses based on new data collected or data newly assessed since the 1998 list was issued;
- ! for which it is known that the impairment is not caused by a pollutant;
- ! for which TMDLs have been developed and approved in the intervening years;
- ! which are expected to meet standards in the near future based on other enforceable control measures.

DEP provided EPA with information specific to each water body for which it requested delisting. Based on the information in the list document’s Appendix B (the reconciliation of the 1998 and 2002 lists), DEP’s responsiveness document, CT’s ADB database of impaired waters, a November 2002 meeting with DEP staff at their office, and several phone calls with DEP staff, EPA received information sufficient to justify the removal of the water bodies for which DEP requested delisting. EPA concurs that the removal of these water bodies is appropriate and consistent with the Clean Water Act and EPA’s regulations.

In developing its new assessment methodology, DEP tried to make the §303(d) list process more consistent. In particular, DEP’s methodology directs that water bodies be listed by their impaired designated use instead of the cause of the impairment. Therefore, DEP made changes to its 2002 list related to the listings for problems or impairments due to inadequate fish passage, eutrophication, and aesthetics which appeared on the 1998 list.

Impairments of aquatic life use due to inadequate fish passage do not have to be listed if there are no pollutant loadings associated with the impairments. Accordingly, DEP has delisted waters impaired by inadequate fish passage which do not have associated pollutant loadings. EPA concurs that these actions are appropriate and consistent with the Clean Water Act and EPA’s regulations.

Impairments previously identified as “aesthetics” or “eutrophication” have been reevaluated and recharacterized based on the relevant designated use being affected. EPA concurs that the revised listings related to aesthetics and eutrophication are appropriate and consistent with the Clean Water Act and EPA’s regulations.

Aesthetics is a narrative criterion in Connecticut’s water quality standards. Due to the ambiguous and subjective nature of measuring aesthetic quality (for example “good to excellent” for Class B waters), it is not routinely assessed for §305(b)-§303(d) reporting. For lakes and ponds, aesthetic conditions are evaluated when necessary by lake managers based on best professional judgment and complaints received by the public. Complaints are usually due to excessive growth of aquatic plants or chronic algae blooms. Eutrophication is a condition related to nutrient enrichment resulting in excessive algae growth and low dissolved oxygen. If eutrophic conditions are severe enough, they can trigger an impairment of a designated use such as aquatic life use support or contact recreation.

DEP reevaluated the previous listings for both aesthetics and eutrophication to determine whether the conditions were impairing the aquatic life use support and contact recreation designated uses. Where the assessed conditions in those water bodies defined a situation where these designated uses were not met, the water bodies were listed for the appropriate impaired use.

In a few cases involving lakes and ponds, DEP concluded that aesthetic conditions were not causing a use impairment, but they were bad enough to cause public complaints. In these cases, DEP did not list the waters on the § 303(d) list but did include the waters on the integrated list to ensure that information is not lost about problems which are not severe enough that a water body fails to support a designated use.

Several 1998 listings for flow modification/regulation and habitat alteration have been removed where it is known that the impairments are not associated with pollutant loadings, or where there is insufficient data or information to support a finding that the water body is impaired. Where flow problems continue to constitute an impairment to the corresponding water body, that water body has been classified into EPA Category 4C (CT Tier 5). One water body listed in 1998 with a problem or impairment of streambank erosion is now on the 2002 list for impairment of aquatic life use support in five of its segments. Potential causes for those impairments include siltation related to streambank and upland erosion. EPA concurs that these actions are appropriate and consistent with the Clean Water Act and EPA’s regulations.

Two waters listed on the 1998 list for sediment contamination remain on the 2002 list but the impairments are characterized differently. One of the water bodies has been completely remediated for its sediment problem. It remains on the list as impaired for aquatic life use support due to hypoxia. The other water body remains impaired due to its sediment problem and has been listed as impaired for aquatic life use support. EPA concurs that these actions are appropriate and consistent with the Clean Water Act and EPA’s regulations.

DEP considered all types of data and information regarding §130.7(b)(5) categories, which is the minimum required by regulations. DEP considered information from a wide range of local, state and federal agencies, academic and consultant sources, including its own volunteer monitoring program network.

DEP considered recommendations by other groups and agencies to list various water bodies that did not appear on the review draft of the list that was provided for public notice. While DEP did not accept all the recommendations, it provided sufficient explanation about those it did not accept (see section “**Waters which are not listed on Connecticut’s 2002 §303(d) list**,” below).

EPA has reviewed Connecticut’s description of the data and information it considered, its methodology for identifying waters, and its Section 305(b) database (ADB). EPA concludes that the State properly assembled and evaluated all existing and readily available data and information relating to the categories of waters specified in 40 CFR §130.7(b)(5).

In addition, the State provided its rationale for not relying on particular existing and readily available water quality-related data and information as a basis for listing waters.

In its “Consolidated Assessment & Listing Methodology for §305(b) and §303(d) Reporting,” which it provided in its submissions to EPA, DEP explained its rationale on data quality, and which data will not meet its criteria for quality necessary to support listing or assessment decisions. EPA concurs that DEP’s criteria for use of data are appropriate.

Waters which are not listed on Connecticut’s 2002 §303(d) List

The State has demonstrated, to EPA’s satisfaction, good cause for not including the following waters on its list. As provided in 40 CFR §130.7(b)(6)(iv), EPA requested that the State demonstrate good cause for not including these waters.

Based on information provided by DEP, EPA concurs that the following water bodies listed as impaired for aquatic life use support in 1998, now meet water quality standards which support that use, and EPA approves their removal from the 2002 list:

Porter Pond
Dodge Pond
Seth Williams Brook, segment 2
Bride Brook tributary
Amos Lake
Oxoboxo Brook
Five Mile River in Killingly
Peak Brook and tributary (now included in Little River, Sprague, segment 2)
Mashamoquet Brook, segment 2
Coginchaug River, segment 5

Eightmile River in Southington, segment 2
Housatonic Estuary (now listed in Housatonic River segment 1)
Deep Brook
East Branch of the Naugatuck River
Lake Forest
Mill River, segment 2
Sasco Brook.

Amos Lake (above) was also listed as impaired for aesthetics in 1998, and now meets standards for uses related to aesthetics. The Yantic River pond & trib segment was listed for aesthetics in 1998 and it, too, now meets standards for uses related to aesthetics, although it remains on the §303(d) list for its aquatic life use support impairment. EPA approves the removal of these water bodies from the list for aesthetic impairments.

EPA concurs that the following water bodies listed as impaired for primary contact recreation in 1998 now meet water quality standards which support that use, and we approve their removal from the list:

Little River in Sprague, segment 2
Pootatuck River
Hollenbeck River
Westcott Cove
Holly Pond/Cove Harbor, segments 2 and 3.

The Byram River, which had been incorrectly identified for a contact recreation impairment in the 1998 list, meets standards for that use. The Yantic River, Muddy Brook, and Beseck Lake were listed for impairments to primary contact recreation and aesthetics in the 1998 list and now meet standards for both of those uses. Beseck Lake now meets standards for eutrophication, for which it appeared as impaired in the 1998 list. EPA approves these removals from the list.

Wethersfield Cove, which is now included in Connecticut River segment 3, and which was listed as impaired for aesthetics in 1998, now meets standards for uses related to aesthetics. Goshen Cove and segment 2 of Holly Pond/Cove Harbor were both listed for impairments to shellfishing in 1998, and now meet standards which support that use. They were incorrectly listed for impairments to recreational shellfishing on the previous list, a use for which they have never been designated. EPA approves their removal from the 2002 list.

EPA concurs that the following water bodies, which were listed as impaired by eutrophication in the 1998 list, now meet water quality standards which support the uses that had been impaired by eutrophication, and we approve their removal from the list:

Moosup Pond
Red Cedar Lake

Center Spring Park Pond
Eagleville Lake
Hopeville Pond
1860 Reservoir
Dooley's Pond
Crystal Lake
Mill Pond
Branford Harbor
Lake Whitney
Lake Lillinonoah
Lake Housatonic
Northfield Brook Lake
Hop Brook Lake
Lake Mamanasco

In addition, Moosup Pond, Red Cedar Lake, and Center Spring Park Pond also meet standards for uses related to aesthetics, for which they were listed as impaired in 1998. EPA approves their removal from the list for that impairment.

Based on the test of data quality in its new assessment methodology, DEP has requested the delisting for the following water bodies for which insufficient data was used to list them for impaired designated uses in 1998, and for which there is still insufficient data to assess them as impaired. EPA has examined the information made available to us and confirms that it is appropriate to remove these water bodies from the list for insufficient information based on the State's current listing methodology. EPA approves the removal of the following water bodies for primary contact recreation:

Pawcatuck River Estuary
Great Meadow Brook
Little River in Sprague, segment 1
Dismal Brook (previously included in Salmon Brook)
West Aspetuck River
Captain's Harbor, segment 1
Norwalk Harbor, segment 1 and
Holly Pond/Cove Harbor, segment 1.

Beldon Hill Brook was previously listed as impaired for primary contact recreation incorrectly based on an effluent which actually discharged into another water body. Aspinook Pond was listed for primary contact recreation but it was not the water body segment into which the CSO in question discharged. There is insufficient data to assess either water body for an impairment to recreation, and EPA approves their removal from the list.

For their previous listing as impaired for aquatic life use support, EPA approves the removal of the following water bodies from the 2002 list for insufficient data based on the State's current listing methodology:

Seth Williams Brook, Segment 1
Little River in Woodstock, segment 2
a tributary of the Farmington River in Burlington
a tributary to the Coginchaug, segment 5
a tributary to the Nonewaug River in Bethlehem (now known as Harvey Brook).

Similarly, Lake Waramaug Brook and the Mianus River were listed in 1998 as impaired for both aquatic life use support and primary contact recreation. No data were used to list them and insufficient data currently exist to assess them for these impairments. EPA approves their removal from the list.

EPA concurs that the 1998 listings for the following water bodies, which were listed as impaired for flow modification/regulation, were based on anecdotal information and that there is currently insufficient information to support an assessment of that impairment, or an impairment associated with a pollutant. Consequently, EPA approves the removal of these water bodies from the 2002 §303(d) list:

Rockland Pond (now included in Oxoboxo Brook)
Scantic River
Shenipsit Lake
Pomperaug River
Horseneck Brook
Shetucket River
Bantam River.

In addition, EPA concurs that the 1998 listings for the following water bodies were based on anecdotal information and that there is currently insufficient information to support an assessment of that impairment. We therefore approve the removal of the Shetucket River for its 1998 listing as impaired for eutrophication, and the Bantam River for its 1998 listing as impaired for aesthetics.

EPA concurs that Horse Brook, Pine Gutter Brook, and the West River Estuary were listed in 1998 as impaired for habitat alteration based on anecdotal information and/or no data. Currently, insufficient data exist to support an assessment of such an impairment, and EPA approves the removal of these water bodies from the §303(d) list for that impairment.

Nickel Mine Brook, which was listed in 1998 for impairments to aquatic life use support, dries up periodically. It has therefore properly been classified into EPA Category 4C (CT Tier 5), with water bodies whose impairment is not associated with a pollutant. EPA approves the removal of

the 1998 sediment contamination listing for the Housatonic Estuary, Lordship Point as this water body has been successfully remediated for the sediment problem. The water body remains listed for aquatic life use support impairment due to another, unrelated cause, hypoxia. A similar listing for Mill Pond has been changed to aquatic life use support and it now appears on the 2002 list with that impairment due to sediment contamination.

The sediment contamination listing is no longer an issue for New London Harbor: a U.S. Navy study shows that water quality standards are met, and EPA is approving the removal of that water body from the 2002 list.

EPA approves the delisting of Vics Pond, which was on the 1998 list in error. It is a constructed treatment lagoon created to serve as a source of water for sand washing, and for sedimentation and filtering of quarry runoff water for a rock quarry. It is still being used for that purpose today. There are no inlets or outlets to the lagoons. From a review of various maps, DEP has no reason to believe that these ponds were constructed in surface waters or wetlands. For these reasons combined, Vics Pond appears not to be a water subject to Clean Water Act jurisdiction and therefore may be removed from the §303(d) list.

EPA also approves the delisting of Rock Lake based on DEP's explanations that the water was previously misidentified as a jurisdictional water body. According to DEP, it is in fact an artificial swimming pool created within a rock outcropping in the 1940s or early 1950s for use by Navy officers and their families. It has been continuously chlorinated since 1960. Each year it is lowered for maintenance and refilled with treated and chlorinated municipal water. Under these circumstances, it appears that the lake is not a jurisdictional water and may be removed from the list.

****Please see Memorandum to File, dated 3/6/03, for further details on the resolution of EPA's questions pertaining to some of the listings addressed above.****

In its review comments on the draft 2002 list, the CT Department of Agriculture, Bureau of Aquaculture (DOA/BOA) had several requests for various water bodies to be listed as having impairments to shellfishing. For Hayden Creek and Housatonic Estuary-Ferry Creek & Shore, data do not exist to show that there is an impairment due to a pollutant loading, and on that basis, EPA approves DEP's decision not to list them. For Long Island Sound West - Offshore segment 3, DEP replied that this segment is fully supporting of shellfishing as a designated use, and meets the appropriate water quality standards. EPA concurs that these findings are appropriate and consistent with the Clean Water Act and EPA's regulations.

Replying to CT DOA/BOA's request to list the following water bodies as having shellfishing impairments, DEP replied that the water bodies in question are freshwater, and therefore shellfishing is not a designated use in those segments:

Oyster River tributary segments 1 and 2
Quinnipiac River segments 1, 2, and 3

Mill River in New Haven segment 1
West River segment 1
Wepawaug River segments 1 and 2
Rooster River segment 1
Mill River in Fairfield segment 2
Sasco Brook segments 1 and 2
Norwalk River segments 1 and 2
Rippowaum River segment 1.

EPA concurs that CT water quality standards support DEP's decision not to list these waters.

The Pomperaug River Watershed Coalition (PRWC) asked why DEP did not list the Pomperaug River for flow impairment. DEP replied that biological assessments showed that the benthic invertebrate community met narrative water quality standards, portions of the river were managed by the Fisheries Division as a Trophy Trout Stream (an indicator of high quality aquatic habitat), and there are no chemical exceedences in the ambient monitoring that would warrant putting the river on the list. The PRWC had no data to support listing the river as impaired. EPA concurs that DEP's decision not to list this river is reasonable and consistent with federal regulations.

The Friends of the Goodwives River requested that the Goodwives River and the area where the river enters Long Island Sound be listed as impaired. DEP replied that when assessments were being made for this listing cycle, DEP was unaware of any data that could be used to assess upstream portions of the river. The segment in which the river entered the Sound was already on the list as Darien Cove, and does not support shellfishing. DEP agreed to consider any reports and data that met quality criteria during the next listing cycle. EPA concurs that DEP's decision not to list this river is reasonable and consistent with federal regulations.

The Mattabasset River Watershed Association requested that a number of streams within the Mattabasset River watershed be listed for impairments to both primary contact recreation and aquatic life use support. After a review of the available data, DEP concluded that none of the water bodies was impaired for both uses, as there were insufficient data to support such an assessment. DEP also found insufficient data to list Swamp Brook for either impaired use. DEP found insufficient data to list Crooked Brook as impaired for primary contact recreation. DEP found sufficient data to classify Crooked Brook as impaired for aquatic life use support in that it dries up periodically, but because it does not suffer from a pollutant loading, it is not listed on the §303(d) list. It is appropriately classified into EPA Category 4C (CT Tier 5).

DEP found sufficient data to list the following Mattabasset River watershed water bodies for primary contact recreation, but not for aquatic life use support:

Belcher Brook
Webster Brook

Sawmill Brook
John Hall Brook
Spruce Brook
Little Brook
Coles Brook
Willow Brook
Miner Brook.

EPA concurs that DEP's decisions regarding the listing of water bodies requested by the Mattabasset River Watershed Association were appropriate (see Table 1, page 32 of the Responsiveness Summary: Response to Comments document).

Waters not listed on Connecticut's 2002 §303(d) List which are expected to meet WQs

The State's decision not to include the following waters on its 2002 Section 303(d) list is consistent with EPA regulations at 40 CFR §130.7(b)(1). These waters were identified on the State's 1998 Section 303(d) list. Under 40 CFR §130.7(b)(1), States are not required to list WQLs still requiring TMDLs where effluent limitations required by the CWA, more stringent effluent limitations required by State or local authority, or other pollution control requirements required by State, local, or federal authority, are stringent enough to implement applicable water quality standards. The regulation does not specify the time frame in which these various requirements must implement applicable water quality standards to support a State's decision not to list particular waters.

Monitoring should be scheduled for these waters to verify that the water quality standard is attained as expected in a reasonable time frame. Where standards will not be attained through implementation of the requirements listed in 40 CFR §130.7(b)(1) in a reasonable time, it is appropriate for the water to be placed on the Section 303(d) list to ensure that implementation of the required controls and progress towards compliance with applicable standards is tracked. If it is determined that the water is meeting applicable standards when the next Section 303(d) list is developed, it would be appropriate for the State to remove the water from the list at that time.

Connecticut has requested that the following water body segments be classified as meeting the criteria for removal from the list based on the expectation that they will meet water quality standards based on other enforceable pollution control measures:

Unnamed tributary to Cedar Swamp and unnamed intermittent stream
Pine Lake (Malone's Pond)
Birge Pond
Silver Lake
Eightmile River, Southington
Edgewood Park Pond
Housatonic River segments 3-7

Lake Lillinonah
Lake Zoar (Aquatic Life Use Support listing)
Lake Zoar segments 1 & 2 (Fish Consumption listing)
Lake Housatonic
Putnam Lake.

The State has demonstrated that there are other enforceable pollution control requirements required by State, local, or federal authorities that will result in attainment of water quality standards within a reasonable time frame for the impairments for which these water bodies would otherwise be listed. Connecticut has demonstrated that the enforceable controls are specific to the water quality problem in each water body and are designed to remediate the problem and restore the impaired use. The State's submission demonstrates that these enforceable requirements will result in attainment of applicable water quality standards for the water bodies and those impairments for which they are listed within a reasonable time, as the control measures include schedules for implementation of the control actions and for attainment of water quality standards. The control measures also specify plans to monitor attainment and maintenance of standards where necessary.

****Please see Memorandum to File, dated 1/31/03, for details on each water body and their qualifications for meeting the criteria for removal from the list.****

EPA approves the removal of these water bodies pursuant to 40 CFR §130.7(b)(1)(iii).

Waters impaired by nonpoint sources of pollution

The State properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) and EPA guidance. Section 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or nonpoint source. EPA's long-standing interpretation is that Section 303(d) applies to waters impacted by point and/or nonpoint sources. In 'Pronsolino v. Marcus,' the District Court for the Northern District of California held that section 303(d) of the Clean Water Act authorizes EPA to identify and establish total maximum daily loads for waters impaired by nonpoint sources. Pronsolino v. Marcus, 91 F. Supp. 2d 1337, 1347 (N.D.Ca. 2000). See also EPA's 1991 Guidance and National Clarifying Guidance for 1998 Section 303(d) Lists, Aug. 27, 1997.

Priority Ranking and Targeting

EPA also reviewed the State's priority ranking of listed waters for TMDL development, and concludes that the State properly took into account the severity of pollution and the uses to be made of such waters, as well as other relevant factors such as the complexity of the impairment and availability of quality information on it, and the likelihood that a remedy might be implemented before a TMDL could be developed (see below). In addition, EPA reviewed the State's identification of WQSLs targeted for TMDL development in the next two years, and concludes that the targeted waters are appropriate for TMDL development in this time frame.

Connecticut generally bases the development of its priority ranking on the severity of the pollution and the uses to be made of such waters, and the factors listed in the 1991 Guidance, especially waters ranked as high priority ("H", see below).

Connecticut also includes other factors such as the availability and quality of data identifying the causes for non-attainment of WQS, and the extent of the water quality problems. Connecticut also bases its ranking in part on the likelihood that a water body's impairment may be resolved before a TMDL is developed.

Connecticut has identified waters for which TMDLs will be completed during the next 2 years (designated by "T"), and those waters still requiring the development of TMDLs are prioritized as high (H), medium (M), or low (L).

TMDL Waters

Waters designated as "T" are top priority and targeted for TMDL development within the next two years. The need to prepare a TMDL for these waters has been confirmed and CT DEP anticipates that sufficient information to support TMDL development exists or can be obtained within the next two years. The 2002 list includes 29 water body segments and impairments designated as "T" for which TMDLs will be developed within the next 2 years.

High Priority Waters

Waters assigned an "H" are high priority waters for a particular impaired use. Assessment information for "H" waters suggests that a TMDL may be needed to restore uses and solve the impairment. Waters and impairments designated as "H" are targeted for TMDL development within 3-5 years. CT's 2002 list designates 55 waterbodies and impairments as "H".

Medium Priority Waters

Waters assigned an "M" are of medium priority. There may be insufficient information to assess whether a pollutant is causing the impairment to these water bodies, and other programs may remedy the water quality impairment. Waters and impairments designated as "M" are targeted for TMDL development within 5-10 years. CT's 2002 list includes 100 waterbodies and impairments with an "M" designation.

Low Priority Waters

Waters and impairments assigned an “L” are low priorities for TMDL development because other programs are likely to remedy the water quality impairment. Waters/impairments designed as “L” are targeted for TMDL development within 10-15 years. CT’s 2002 list includes 165 “L” waterbodies and impairments.

Connecticut employs a five year rotating basin monitoring cycle. As additional data are compiled, CT is committed to re-prioritizing waters based on factors such as, but not limited to, the nature/severity of the impact, importance of unsupported use, the availability of data or models required for TMDL development, etc. Overall, CT is committed to completing TMDL development for all listed waters by the year 2017.

EPA - New England concludes that CT’s waterbody prioritization and identification of waters targeted for TMDL development during the next 2 years is reasonable and sufficient for the purposes of Section 303(d). CT DEP properly examined and considered the severity of pollution and uses of the listed waters, as well as other relevant factors. In addition, EPA - New England has determined that CT DEP properly ranked those waters listed for TMDL development within the next 2 years by considering the complexity of each TMDL. Further, EPA - New England has determined that CT DEP priority ranking ensures reasonable progress in addressing high priority waters with challenging water quality problems (Memo from Geoffrey H. Grubs, Supplemental Guidance on Section 303(d) Implementation, August 13, 1992).

Water Bodies on Tribal Lands

EPA’s approval of Connecticut’s Section 303(d) list extends to all water bodies on the list with the exception of those waters, if any, that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA is taking no action to approve or disapprove the State’s list with respect to those waters at this time. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under Section 303(d) for those waters.